

UNITED STATES

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-(b) (6)

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

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DEFENSE REQUEST FOR THE COURT TO ORDER THE GOVERNMENT TO DISCLOSE ITS *EX PARTE* DUE DILIGENCE FILING TO THE DEFENSE AND TO PROVIDE A WORD OR EXCEL VERSION OF ITS SPEEDY TRIAL CHRONOLOGY

DATED: 27 September 2012

1. The Defense requests that this Court order the Government to disclose Appellate Exhibit 264, *ex parte* Due Diligence filing, to the Defense. The Defense also requests that the Court order the Government to provide a Word or Excel version of its Speedy Trial Chronology to the Court and Defense.

2. The Defense does not request any witnesses for this motion, but does request that the Court consider the Defense's Motion to Dismiss All Charges and Specifications With Prejudice for Lack of a Speedy Trial, dated 19 September 2012 [hereinafter "Defense Speedy Trial Motion"]. The Defense also requests that the Court considered the Government's Speedy Trial Chronology filed on 26 September 2012 for the purposes of this motion.

3. The Court and parties agreed to table the argument of the Defense's request for witnesses for the speedy trial motion until after the Government filed its chronology. It was anticipated that the Government's chronology could assist the Defense and the Court in determining which witnesses were needed for the purposes of the motion. The Government's chronology was supposed to provide a detailed accounting of its activities. Instead, the Government provides a 200 page-plus chronology which details activities at such a level of generality that it is impossible to gauge what the Government was doing when (e.g. repeated references to "Email to DOS" or "Email from DOJ"). The Government also indicates in its cover email that the chronology was not intended to be exhaustive, meaning that the Defense should not read the

absence of activity as suggesting that things weren't being done. Additionally, the Defense twice requested on 27 September 2012 that the Government provide a Word or Excel version of the chronology. The Government refused to do so.

4. In addition to the above facts, the Defense requests that the Court consider the facts detailed in the Defense Speedy Trial Motion.

ARGUMENT

5. The Government's Speedy Trial Chronology filed on 26 September 2012 fails to provide the Defense with the specificity needed to determine whether some of the previously requested witnesses are no longer necessary. Unlike the Government's apparent accounting in Appellate Exhibit 264, the Government fails to provide any detail on the following:

- a. Steps the Government has taken to inquire about the existence of files pertaining to PFC Manning from Government agencies/entities;
- b. When these inquiries were made;
- c. When the Government became aware of the existence of each file pertaining to PFC Manning from Government agencies/entities;
- d. What files the Government has searched for *Brady*/RCM 701(a)(6) information and when;
- e. What files the Government has searched for information material to the preparation of the defense IAW RCM 701(a)(2) and when.
- f. What information from the above files the Government has disclosed to the Defense;
- g. What files the Government has reviewed and found no discoverable information;
- h. What files the Government has decided not to disclose to the Defense;
- i. What files the Government has identified that have yet to be searched for *Brady*/RCM 701(a)(6) and/or RCM 701(a)(2);
- j. What the Government did to ensure the classification reviews by the OCAs were completed in a timely manner;

6. The Government's Speedy Trial Chronology lacks any of the above specificity. Instead, it provides generic statements that do not enable the Defense or the Court to gauge what the Government was actually doing, or the reasons why the Government failed to timely follow up on its discovery and case preparation obligations.

7. In the Defense's view, the Government also listed a significant amount of irrelevant "filler" designed to make it appear that the Government was actively working on the case, when in reality it was not. The hundreds of references to "leave", "holidays", "conferences", events that happened with PFC Manning, work being done by other entities such as CCIU, requests by defense counsel, etc. are all designed to create the illusion of diligence without answering any of the specific questions raised by the defense in critical aspects of the case (e.g. OCA reviews; specific discovery inquiries and follow-up). To provide but one example, the Government references the statement "Worked generally to produce discoverable information, develop evidence and witnesses, identify other potentially discoverable material and associated equity holders, and prepare for Article 32 investigation [or trial]" a total of 547 times.

8. The Defense requests that the Court order the Government to provide its (presumably) responsive due diligence statement, so that the Defense can actually see what was being done during this time period. The chronology does not provide any guidance or assistance in this respect.

9. The Defense also requested an electronic, text-searchable version of the Government's Speedy Trial chronology (either Word or Excel). The Defense's request was eminently reasonable and parallels the Court's request that the parties provide Word versions of all litigation documents. The Defense believes that that Government's refusal to provide a Word or Excel version is without justification. The Defense would like the ability to readily search the chronology for the critical issues, which are currently hidden in the morass of superfluous filler. The Defense has always acceded to reasonable Government requests (e.g. to provide redactions in yellow instead of black), and there is no reason why the Government cannot produce a text-searchable version of the document for the Defense.

CONCLUSION

10. In order to narrow the scope of required witnesses for the speedy trial motion, the Defense requests that this Court order the Government to disclose Appellate Exhibit 264 to the Defense and to produce a Word or Excel version of the chronology.

Respectfully submitted,

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